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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,282	04/10/2001	Kelly Olsen	10209.123	8316
21999	7590	06/01/2007	EXAMINER	
KIRTON AND MCCONKIE			LASTRA, DANIEL	
60 EAST SOUTH TEMPLE,				
SUITE 1800			ART UNIT	PAPER NUMBER
SALT LAKE CITY, UT 84111			3622	
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			06/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/832,282	OLSEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	DANIEL LASTRA	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 15 March 2007.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-16, 18-25 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-16, 18-25 and 27-29 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

1. Claims 1-16, 18-25 and 27-29 have been examined. Application 09/832,282 (METHOD FOR UNILEVEL MARKETING) has a filing date 04/10/2001.

### ***Response to Amendment***

2. In response to Notice of Noncompliant amendment filed 02/23/2007, the Applicant filed an Amendment on 03/15/2007, which amended claim 16. Applicant's amendment overcame the previously claims objections.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 9, 11-16, 18-21, 23, 25 and 27-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Sash (US 2005/0075925).

As per claim 1, Sash teaches:

A method of unilevel marketing and distribution comprising the steps of:  
using a computer to receive a reference for a specific potential customer from a sales representative, the reference being initiated by said sales representative who is

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known by said potential customer (see figure 27c) and received by a seller (see figure 27c), wherein said reference includes a message that is personalized specifically to the potential customer from said sales representative (see figures 27b, 27c);

preparing promotional materials for distribution to said potential customer, wherein said promotional materials include said personalized message and means for identifying said sales representative (see figure 27c; paragraphs 129-131);

distributing said promotional materials directly to the said potential customer from a distributor (see figure 27b; "producthawk.com");

if the potential customer purchases from said promotional materials, using a computer to:

receive a purchase orders from said potential customer, wherein said order is received by said distributor and identifies said sales representative (see paragraph 129);

receive payment for said order (see paragraph 129; figure 28b); and

distribute a portion of said received payment as a commission to said sales representative (see paragraphs 129-131; figure 27a).

As per claim 16, Sash teaches:

A method for selling product through direct promotion and direct distribution to a customer, the method comprising the steps of:

using a computer to receive referral from a sales representative over the Internet for a specific potential customer, the referral being initiated by said sales representative entering information into a webpage (see figure 27b,c), wherein said referral includes a

message that is personalized specifically to said customer from said sales representative, who is known by said customer (see figures 27b,c);

preparing promotional materials for said customer, wherein said promotional materials include said personalized message and an identifier of said sales representative (see paragraphs 129-131);

sending said promotional materials to said customer from a distributor (see figure 27c);

if said customer purchases from said promotional materials, using a computer to: receive a purchase order from said customer, said purchase order containing said identifier of said sales representative (see paragraph 129);

receive payment for said order from said customer; wherein the payment is received by an entity selected from a list consisting of the distributor and a seller (see paragraph 129; figures 28b, 30a); and

provide a portion of said payment to said sales representative as a commission for said purchase (see paragraph 129).

As per claims 2, Sash teaches:

The method of claim 1, wherein the reference received from the sales representative is received over the Internet using a web page accessed by the sales representative (see paragraph 27c).

As per claims 3 and 18, Sash teaches:

The method of claim 1, teach wherein said means for identifying the sales representative is an identification number (see paragraph 129).

As per claim 4, Sash teaches:

The method of claim 1, teach wherein said means for identifying provides said distributor with preferred options for distributing said portion of said received payment to the sales representative (see paragraph 129).

. As per claims 5 and 19, Sash teaches:

The method of claim 1, wherein said reference is received over the Internet (see figure 27c).

As per claims 6 and 20, Sash teaches:

The method of claim 1, wherein said reference is received via E-mail (see figure 27c).

As per claims 7 and 21, Sash teaches:

The method of claim 1, wherein said promotional material are received via a telephone (see paragraph 128).

As per claim 9, Sash teaches:

The method of claim 1, wherein the promotional materials are in printed form (see paragraph 128).

As per claim 12, Sash teaches:

The method of claim 1, wherein the reference is received by a distributor was input by the sales representative at a website (see figures 27a-c).

As per claims 13 and 27, Sash teaches:

The method of claim 1, wherein the reference received from the sales representative is stored in a customer database (see paragraph 129).

As per claims 14 and 28, Sash teaches:

The method of claim 1, teach wherein the promotional materials are transmitted to the customer over the Internet in the form of electronic mail (see figure 27c).

As per claims 15 and 29, Sash teaches:

The method of claim 1, wherein the customer purchases over the Internet (see figure 28b).

As per claims 11 and 25, Sash teaches:

The method of claim 1, wherein the reference provided by the sales representative includes the customer's age, interests, income level, or household (see figure 8 "household").

#### **Claim Rejections - 35 USC § 103**

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8, 10, 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sash (US 2005/0075925).

As per claims 8 and 22, Sash teaches:

The method of claim 1, but fails to teach wherein the promotional materials are in an audio form. However. Official notice is taken that it is old and well known in the

computer art to use video and/or audio when transmitting advertisements and promotions to users via the Internet. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sash would send audio promotions to users via the Internet, as said promotions would provide a better multimedia experience to said users.

As per claims 10 and 24, Sash teaches:

The method of claim 1, but fails to teach wherein the promotional materials are in a video presentation format. However, Official notice is taken that it is old and well known in the computer art to use video when transmitting advertisements and promotions to users via the Internet. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sash would send video promotions to users via the Internet, as said promotions would provide a better multimedia experience to said users.

#### **Response to Arguments**

5. Applicant's arguments filed 03/15/2007 have been fully considered but they are not persuasive. The Applicant argues that for Sash to serve a prior art against the present application the information relied upon by the Examiner must have been disclosed in the Application no. 09/565,399 filed on May 5, 2000. However, the Applicant argues that said application 09/565,399 is not publically available document and therefore, according to the Applicant, is not possible to ascertain whether the material relied on in Sash's 2005/0075925 was present in the parent application 09/565,399. Therefore, the Applicant argues that because Sash's 2005/0075925

effective filing date occurs later in time than the filing date for the present application, Sash is not a reference that may be cited against the present application.

The Examiner answers that the Applicant is incorrect because MPEP 37 CFR 1.14 (iv) Unpublished abandoned applications (including provisional applications) that are identified or relied upon: teaches "The file contents of an unpublished, abandoned application may be made available to the public if the application is identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, or an international patent application publication of an international application that was published in accordance with PCT Article 21(2). An application is considered to have been identified in a document, such as a patent, when the application number or serial number and filing date, first named inventor, title and filing date or other application specific information are provided in the text of the patent, but not when the same identification is made in a paper in the file contents of the patent and is not included in the printed patent. Also, the file contents may be made available to the public, upon a written request, if benefit of the abandoned application is claimed under 35 U.S.C. 119(e), 120, 121, or 365 in an application that has issued as a U.S. patent, or has published as a statutory invention registration, a U.S. patent application publication, or an international patent application that was published in accordance with PCT Article 21(2). A copy of the application-as-filed, the file contents of the application, or a specific document in the file of the application may be provided to any person upon written request, and payment of the appropriate fee ( § 1.19(b))". Furthermore, the MPEP recites in 35 U.S.C. 121 Divisional applications: "If two or more independent and distinct

inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Director may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Director to require the application to be restricted to one invention". Therefore, contrary to Applicant's argument, since Sash's 09/565,399 was identified in the printed text of U.S. patent application publication 2005/0075925 and also because 09/565,399 is claimed under 35 U.S.C. 120, 121 in Application 2005/0075925, then Sash's application 09/565,399 is publically available and may be made available to the Applicant, upon a written request. Furthermore, because Application publication 2005/0075925 is a division (see MPEP section 121) of Application 09/565,399, which complies with the requirements of section 120, 2005/0075925 shall be entitled to the benefit of the filing date of the original application 09/565,399 (May 5, 2000). Therefore, contrary to Applicant's argument, it is ascertain

that the material relied on in Sash is present in the parent application 09/565,399 as 2005/0075925 is a divisional to 09/565,399. The Examiner reviewed Applications 09/565,399 and 2005/0075925 and found to be the same. The only way application 2005/0075925 may be different from 09/565,399 is, if 2005/0075925 would had been a continuation-in-part of 09/565,399, however, this is not that case.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W. STAMBER can be reached on 571-272-6724. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D  
Daniel Lastra  
May 20, 2007



RAQUEL ALVAREZ  
PRIMARY EXAMINER